



February 27, 2023

Environment Committee
Legislative Office Building, Room 3200
Hartford, CT 06106

Dear Co-Chairs Lopes and Gresko and Ranking Members Harding and Callahan:

Thank you for considering important packaging and recycling legislation in Connecticut. The Sustainable Food Policy Alliance (SFPA) is comprised of member companies Danone North America, Mars Incorporated, Nestlé USA and Unilever United States. Each member company has made extensive investments and commitments to make consumer product packaging more sustainable and expedite the transition to a circular economy. In July 2020, we released a set of [Packaging and Recycling Policy Priorities](#) that outline several policy solutions essential to transforming our nation's current waste management and recycling systems and followed up with a set of [Extended Producer Responsibility \(EPR\) Policy Priorities](#) in January 2022.

These priorities aim to shift away from the status quo and move toward a waste and recycling future where companies like ours can set and meet ambitious goals to integrate post-consumer recycled (PCR) content into our packaging, consumers are educated to better navigate their local recycling systems, and we can all be better stewards of the environment. Within our own companies, we are investing in improving recycling systems around the world, innovating our packaging design, and collaborating with suppliers, local communities, and retail customers to advance forward-looking solutions that help our consumers make a difference and impact the planet. We know it is essential for stakeholders to come together to make end-to-end system changes that will truly transform our waste management system into a circular economy.

SFPA is supportive of Extended Producer Responsibility (EPR) programs. All four companies participate in EPR programs globally and we have worked to set up and support EPR programs and policies in the United States. We were excited to see HB 6664 introduced this year, and we hope to be able to enthusiastically support this bill. In its current form, our group has a number of concerns with the proposal. We outline our general comments as follows:

Producer Responsibility Organization (PRO):

- We applaud the broad discretion of the PRO, but we believe the program will be most effective beginning with one single PRO and opening up to multiple PROs after a few years, similar to the model in Colorado. The current proposals allows for multiple PROs by material type, creating a higher administrative burden and unnecessary complexity for the state as well as producers.
- We agree that the PRO is best suited to scope and perform the needs assessment. Further, with one PRO, we think there should be a single needs assessment conducted. Following the needs assessment, the PRO will be best positioned to set fees and goals.
- In our principles, we support eco-modulation and we were pleased to see it in the bill. However, we have concerns with several of the current eco-modulation factors:

- We suggest that the adjustment factors should be scaled back significantly to ensure compliance.
- We would ask for additional clarity on the fee mitigation process for materials with an 85% recycling rate.
- [The Recycling Partnership's Policy Accelerator](#) developed a guidance memo with key principles regarding eco-modulation that we support and have highlighted below:
 - Eco-modulation should combine simplicity, with a sufficiently differentiated fee structure to ensure that producer-funded recycling programs achieve broader environmental objectives.
 - The specific eco-modulation factors and fee setting formula used, including the level of bonus or penalty, would be decided by the PRO in consultation with industry experts.
 - The balancing of bonus and penalty factors is important and must be placed in context of the overall system financing needs. Given that the PRO has a defined amount of funding that must be raised through the fees, providing numerous incentives and disincentives will raise the base fees across the board and add significant administrative complexity.
- We support the PRO's goal setting responsibility, but have several concerns about the specific parameters:
 - We propose that rates for reuse, refill, recycling and source reduction should be appropriately set following the needs assessment rather than the five years proposed in the bill. In particular, we note that it has been our experience that the reuse industry is still maturing. We recommend initially rewarding reuse packaging portfolios through eco modulation until the infrastructure can match the vision of the program.
 - For source reduction, we support adding language similar to that included in [California's SB 54](#): *"(i) From the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 5 percent or greater source reduction of its covered materials through shifting to refill, reuse, or elimination. (ii) From the 2013 calendar year to the 2022 calendar year, inclusive, the producer achieved a net 8 percent or greater source reduction of its covered materials through optimization, concentration, right-sizing, bulking, shifting to a nonplastic packaging, or lightweighting, or increasing the number of consumer uses."*
 - In addition, calculating the recycling rate as described will pose significant additional challenges because the measurement is calculated downstream of the materials recovery facilities by material type as material enters an end market process (i.e., as flake for plastic recycling or glass after beneficiation).
- We also caution that the provision to allow the Commissioner of Energy and Environmental Protection to amend plan at any time is challenging. We support strong PRO leadership to provide needed regulatory certainty, and suggest the inclusion of a limited, formal process if amendments from the state are required.

Recycling Definitions:

- It is our understanding that the bill allows for a broad definition of recycling allowing for innovative technologies that help materials or waste to be collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products. We agree

that recycling does not include energy recovery or energy generation resulting from combustion or incineration processes.

- If the department is reviewing non-mechanical recycling process beyond its core permitting authorities, a Life Cycle Analysis (LCA) should be assessed against virgin plastic rather than mechanical recycling since recycled content from advanced recycling displaces virgin plastic not PCR from mechanical recycling. Note that we support non-mechanical recycling processes after it has been determined that mechanical recycling is not viable. If postuse plastic polymers are not able to be mechanically recycled, the department must determine that the non-mechanical recycling processes produce similar or lesser impacts than the likely end of life outcome, landfill or waste to energy incineration facilities. We support the consideration of how a non-mechanical recycling method would impact plastic recycled for food and pharmaceutical-grade applications.

Scope:

- We appreciate this bill includes all materials.
- We support the bill's efforts to harmonize with other states and potentially a future federal program, which is imperative for global companies like ours.
- As written, the bill requires producers to manage litter abatement which we believe is better addressed separately from the EPR program.
- The civil fines for violations are substantial. We recommend these fees are paired with a required notice of violation in advance of fines and an appeal process to provide an avenue for due process.
- We ask for additional clarity on the bill's unusual requirement to "minimize public sector involvement in the management of covered materials," which could imply privatizing collection and processing, taking over public operations.
- We are concerned about the toxicity reduction requirements for PRO. We request additional clarity on the intent along with guidance on what toxic materials are targeted.

Minimum Recycled Content Requirements for Beverage Containers:

- Labels and closures should be excluded from the container definition. We ask for additional clarity on how and when additional components like caps "may" be included in calculations.
- Standards apply to "any" plastic beverage container sold, but compliance is defined "on average." We request additional clarity on the intent behind this description.
- The implementation schedule should be harmonized with other states putting in place similar policies. In addition, we would like to see the bill amended to include specific on-ramps for the PCR requirements.
 - For example, we recommend the following language from [New Jersey's Recycled Content Law](#): *"(1) the manufacturer cannot achieve the postconsumer recycled content requirements and remain in compliance with applicable rules and regulations adopted by the United States Food and Drug Administration, or any other State or federal law, rule, or regulation; (2) it is not technologically feasible for the manufacturer to achieve the postconsumer recycled content requirements; (3) the manufacturer cannot comply with the postconsumer recycled content requirements due to inadequate availability of recycled material or a substantial disruption in the supply of recycled material; or (4) the*



manufacturer cannot comply for another reason as determined by the department pursuant to rule, regulation, or guidance.

- We also recommend that the state study on MCR take place prior to the first target deadline, allowing research to illuminate if set targets are achievable or if they should be changed.
- In terms of compliance, we have additional concerns with the requirement for producers to submit third party certification of recycled content data, publishing each company's annual reported data on the state's website, and the lack of penalties.

We are committed to continuing to work with you and other stakeholders to refine this bill as it goes through the legislative process, and we are confident that we can all work together to revise the bill into something we can support. We appreciate your leadership on this topic as well as the opportunity give feedback on this important legislation.

Sincerely,

Sustainable Food Policy Alliance